

House of Representatives, April 14, 1998. The Committee on Finance, Revenue and Bonding reported through REP. SCHIESSL, 60th DIST., Chairman of the Committee on the part of the House, that the bill ought to pass.

AN ACT CONCERNING THE CONNECTICUT UNIFORM SECURITIES ACT.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Subdivision (10) of section 36b-3
2 of the general statutes, as amended by section 1
3 of public act 97-220, is repealed and the
4 following is substituted in lieu thereof:
5 (10) "Investment adviser" means any person
6 who, for compensation, engages in the business of
7 advising others, either directly or through
8 publications or writings, as to the value of
9 securities or as to the advisability of investing
10 in, purchasing or selling securities, or who, for
11 compensation and as a part of a regular business,
12 issues or promulgates analyses or reports
13 concerning securities. "Investment adviser" does
14 not include (A) AN INVESTMENT ADVISER AGENT; (B) a
15 bank and trust company, a national banking
16 association, a savings bank, a savings and loan
17 association, a federal savings and loan
18 association, a credit union, a federal credit
19 union or a trust company; [(B)] (C) a lawyer,
20 accountant, engineer, or teacher whose performance
21 of these services is solely incidental to the
22 practice of his profession; [(C)] (D) a

23 broker-dealer whose performance of these services
24 is solely incidental to the conduct of his
25 business as a broker-dealer and who receives no
26 special compensation for them; [(D)] (E) a
27 publisher of any bona fide newspaper, news
28 magazine, or business or financial publication of
29 general, regular, and paid circulation; [(E)] (F)
30 a person whose advice, analyses or reports relate
31 only to securities exempted by subdivision (1) of
32 subsection (a) of section 36b-21, as amended by
33 section 11 of [this act] PUBLIC ACT 97-220 AND
34 SECTION 5 OF THIS ACT; [(F)] (G) any insurance
35 company under the supervision of the Insurance
36 Commissioner or any affiliate thereof, as defined
37 in subsection (b) of section 38a-129, when
38 providing services to separate accounts of that
39 insurance company or registered investment
40 companies all of whose shares are owned by such
41 insurance company or its insurance company
42 affiliates or by the separate accounts of that
43 insurance company or its insurance company
44 affiliates; and [(G)] (H) such other persons not
45 within the intent of this [subsection] SUBDIVISION
46 as the commissioner may by regulation or order
47 designate.

48 Sec. 2. Subdivision (11) of section 36b-3 of
49 the general statutes, as amended by section 1 of
50 public act 97-220, is repealed and the following
51 is substituted in lieu thereof:

52 (11) (A) "Investment adviser agent" includes
53 (i) any individual, [other than an investment
54 adviser, or a sole proprietor of an investment
55 adviser] INCLUDING AN OFFICER, PARTNER OR DIRECTOR
56 OF AN INVESTMENT ADVISER, OR AN INDIVIDUAL
57 OCCUPYING A SIMILAR STATUS OR PERFORMING SIMILAR
58 FUNCTIONS, employed, appointed or authorized by OR
59 ASSOCIATED WITH an investment adviser to solicit
60 business from any person for such investment
61 adviser, within or from this state, and who
62 receives compensation or other remuneration,
63 directly or indirectly, for such solicitation; [.
64 An officer, partner or director of an investment
65 adviser, or an individual occupying a similar
66 status or performing similar functions, is an
67 investment adviser agent only if he otherwise
68 comes within this definition.] OR (ii) ANY
69 PARTNER, OFFICER, OR DIRECTOR OF AN INVESTMENT
70 ADVISER, OR AN INDIVIDUAL OCCUPYING A SIMILAR

71 STATUS OR PERFORMING SIMILAR FUNCTIONS, OR OTHER
72 INDIVIDUAL EMPLOYED, APPOINTED, OR AUTHORIZED BY
73 OR ASSOCIATED WITH AN INVESTMENT ADVISER, WHO
74 MAKES ANY RECOMMENDATION OR OTHERWISE RENDERS
75 ADVICE REGARDING SECURITIES TO CLIENTS AND WHO
76 RECEIVES COMPENSATION OR OTHER REMUNERATION,
77 DIRECTLY OR INDIRECTLY, FOR SUCH ADVISORY
78 SERVICES.

79 (B) "INVESTMENT ADVISER AGENT" DOES NOT
80 INCLUDE AN INDIVIDUAL EMPLOYED, APPOINTED OR
81 AUTHORIZED BY, ASSOCIATED WITH OR ACTING ON BEHALF
82 OF AN INVESTMENT ADVISER EXEMPT FROM REGISTRATION
83 UNDER SUBDIVISIONS (1) AND (2) OF SUBSECTION (e)
84 OF SECTION 36b-6, AS AMENDED BY SECTION 3 OF
85 PUBLIC ACT 97-220, WHO IS A "SUPERVISED PERSON" AS
86 DEFINED IN SUBPARAGRAPH (C) OF THIS SUBDIVISION
87 UNLESS (i) MORE THAN TEN PER CENT OF THE ADVISORY
88 CLIENTS ARE NATURAL PERSONS AND THE SUPERVISED
89 PERSON HAS A PLACE OF BUSINESS IN THIS STATE, (ii)
90 THE SUPERVISED PERSON ON A REGULAR BASIS SOLICITS,
91 MEETS WITH, OR OTHERWISE COMMUNICATES WITH CLIENTS
92 OF THE EXEMPT INVESTMENT ADVISER IN THIS STATE,
93 AND (iii) THE SUPERVISED PERSON DOES NOT
94 EXCLUSIVELY RENDER IMPERSONAL INVESTMENT ADVICE.

95 (C) FOR PURPOSES OF SUBPARAGRAPH (B) OF THIS
96 SUBDIVISION: (i) "IMPERSONAL INVESTMENT ADVICE"
97 MEANS INVESTMENT ADVISORY SERVICES PROVIDED BY
98 MEANS OF WRITTEN MATERIAL OR ORAL STATEMENTS THAT
99 DO NOT PURPORT TO MEET THE OBJECTIVES OR NEEDS OF
100 SPECIFIC INDIVIDUALS OR ACCOUNTS; (ii) "NATURAL
101 PERSON" SHALL NOT INCLUDE AN INDIVIDUAL WHO
102 IMMEDIATELY AFTER ENTERING INTO THE INVESTMENT
103 ADVISORY CONTRACT WITH THE EXEMPT INVESTMENT
104 ADVISER HAS AT LEAST FIVE HUNDRED THOUSAND DOLLARS
105 UNDER MANAGEMENT WITH SUCH INVESTMENT ADVISER, OR
106 WHO THE EXEMPT INVESTMENT ADVISER REASONABLY
107 BELIEVES, IMMEDIATELY PRIOR TO ENTERING INTO THE
108 ADVISORY CONTRACT, HAS A NET WORTH TOGETHER WITH
109 ASSETS HELD JOINTLY WITH A SPOUSE, AT THE TIME THE
110 CONTRACT IS ENTERED INTO, OF MORE THAN ONE MILLION
111 DOLLARS; AND (iii) "SUPERVISED PERSON" MEANS ANY
112 PARTNER, OFFICER, DIRECTOR, OR OTHER PERSON
113 OCCUPYING A SIMILAR STATUS OR PERFORMING SIMILAR
114 FUNCTIONS, OR EMPLOYEE OF AN EXEMPT INVESTMENT
115 ADVISER, OR OTHER PERSON WHO PROVIDES INVESTMENT
116 ADVICE ON BEHALF OF SUCH INVESTMENT ADVISER AND IS
117 SUBJECT TO THE SUPERVISION AND CONTROL OF SUCH
118 INVESTMENT ADVISER.

119 (D) "INVESTMENT ADVISER AGENT" DOES NOT
120 INCLUDE SUCH OTHER INDIVIDUALS NOT WITHIN THE
121 INTENT OF THIS SUBDIVISION AS THE COMMISSIONER MAY
122 BY REGULATION OR ORDER DESIGNATE.

123 Sec. 3. Subsection (d) of section 36b-6 of
124 the general statutes, as amended by section 3 of
125 public act 97-220, is repealed and the following
126 is substituted in lieu thereof:

127 (d) No broker-dealer or investment adviser
128 shall transact business from any place of business
129 located within this state unless that place of
130 business is registered as a branch office with the
131 commissioner pursuant to this subsection, PROVIDED
132 AN INVESTMENT ADVISER THAT IS REGISTERED WITH THE
133 SECURITIES AND EXCHANGE COMMISSION MAY, IN LIEU OF
134 FILING AN APPLICATION FOR BRANCH OFFICE
135 REGISTRATION, FILE A NOTICE WITH THE COMMISSIONER
136 FOR EACH BRANCH OFFICE OF THE ADVISER LOCATED
137 WITHIN THIS STATE TOGETHER WITH A NONREFUNDABLE
138 NOTICE FEE OF ONE HUNDRED DOLLARS PER BRANCH
139 OFFICE. An application for branch office
140 registration shall be made on forms prescribed by
141 the commissioner and shall be filed with [him] THE
142 COMMISSIONER, TOGETHER with a nonrefundable
143 APPLICATION fee of one hundred dollars per branch
144 office. A broker-dealer or investment adviser,
145 OTHER THAN AN INVESTMENT ADVISER THAT IS
146 REGISTERED WITH THE SECURITIES AND EXCHANGE
147 COMMISSION, shall promptly notify the commissioner
148 in writing if such broker-dealer or investment
149 adviser (1) engages a new manager at a branch
150 office in this state, (2) acquires a branch office
151 of another broker-dealer or investment adviser in
152 this state, or (3) relocates a branch office in
153 this state. [In the case of a branch office
154 acquisition or relocation, the broker-dealer or
155 investment adviser shall pay to the commissioner
156 an additional nonrefundable fee of one hundred
157 dollars.] IN THE CASE OF A BRANCH OFFICE
158 ACQUISITION OR RELOCATION, SUCH BROKER-DEALER OR
159 INVESTMENT ADVISER SHALL PAY TO THE COMMISSIONER A
160 NONREFUNDABLE FEE OF ONE HUNDRED DOLLARS. AN
161 INVESTMENT ADVISER THAT IS REGISTERED WITH THE
162 SECURITIES AND EXCHANGE COMMISSION SHALL NOTIFY
163 THE COMMISSIONER OF AN ACQUISITION OR RELOCATION
164 OF ANY BRANCH OFFICE OF THE INVESTMENT ADVISER IN
165 THIS STATE IN THE SAME MANNER AS AND CONCURRENTLY
166 WITH THE NOTIFICATION OF SUCH INFORMATION TO THE

167 SECURITIES AND EXCHANGE COMMISSION AND SHALL PAY
168 TO THE COMMISSIONER A NONREFUNDABLE FEE OF ONE
169 HUNDRED DOLLARS. Each registrant or applicant for
170 branch office registration, AND EACH INVESTMENT
171 ADVISER WITH A BRANCH OFFICE IN THIS STATE THAT IS
172 REGISTERED WITH THE SECURITIES AND EXCHANGE
173 COMMISSION, shall pay the actual cost, as
174 determined by the commissioner, of any reasonable
175 investigation or examination made of such
176 registrant, [or] applicant OR INVESTMENT ADVISER
177 by or on behalf of the commissioner.

178 Sec. 4. Section 36b-20 of the general
179 statutes, as amended by section 10 of public act
180 97-220, is repealed and the following is
181 substituted in lieu thereof:

182 (a) The commissioner may issue a stop order
183 denying effectiveness to, or suspending or
184 revoking the effectiveness of, any registration
185 statement if he finds (1) that the order is in the
186 public interest and (2) that: (A) The registration
187 statement as of its effective date or as of any
188 earlier date in the case of an order denying
189 effectiveness, or any report under subsection (j)
190 of section 36b-19, as amended by section 9 of
191 [this act] PUBLIC ACT 97-220, is incomplete in any
192 material respect BUT IS NOT ABANDONED PURSUANT TO
193 SUBSECTION (e) OF THIS SECTION or contains any
194 statement which was, in the light of the
195 circumstances under which it was made, false or
196 misleading with respect to any material fact; (B)
197 any provision of sections 36b-2 to 36b-33,
198 inclusive, as amended by this act AND PUBLIC ACT
199 97-220, or any regulation, order or condition
200 lawfully imposed under said sections has been
201 wilfully violated, in connection with the
202 offering, by (i) the person filing the
203 registration statement, (ii) the issuer, any
204 partner, officer or director of the issuer, any
205 person occupying a similar status or performing
206 similar functions, or any person directly or
207 indirectly controlling or controlled by the
208 issuer, provided the person filing the
209 registration statement is directly or indirectly
210 controlled by or acting for the issuer, or (iii)
211 any underwriter; (C) the security registered or
212 sought to be registered is the subject of an
213 administrative stop order or similar order or a
214 permanent or temporary injunction of any court of

215 competent jurisdiction entered under any other
216 federal or state act applicable to the offering;
217 except the commissioner (i) may not institute a
218 proceeding against an effective registration
219 statement under this subparagraph more than one
220 year from the date of the order or injunction
221 relied on, and (ii) may not enter an order under
222 this subparagraph on the basis of an order or
223 injunction entered under any other state act
224 unless that order or injunction was based on facts
225 which would currently constitute a ground for a
226 stop order under this section; (D) the issuer's
227 enterprise or method of business includes or would
228 include activities which are illegal where
229 performed; (E) the offering has worked or tended
230 to work a fraud upon purchasers or would so
231 operate; (F) the offering has been or would be
232 made with unreasonable amounts of underwriters'
233 and sellers' discounts, commissions or other
234 compensation, or promoters' profits or
235 participation, or unreasonable amounts or kinds of
236 options; (G) when a security is sought to be
237 registered by coordination, there has been a
238 failure to comply with the undertaking required by
239 subdivision (4) of subsection (b) of section
240 36b-17; (H) the applicant or registrant has failed
241 to pay the proper filing fee; but the commissioner
242 may enter only a denial order under this clause
243 and he shall vacate any such order when the
244 deficiency has been corrected; or (I) the issuer
245 is a blank check company. The commissioner may not
246 institute a stop order proceeding against an
247 effective registration statement on the basis of a
248 fact or transaction known to him when the
249 registration statement became effective unless the
250 proceeding is instituted within one hundred eighty
251 days of the effective date of such registration
252 statement.

253 (b) The commissioner may by order summarily
254 postpone or suspend the effectiveness of the
255 registration statement pending final determination
256 of any proceeding under this section. Upon the
257 entry of the order, the commissioner shall
258 promptly notify each person specified in
259 subsection (c) of this section that it has been
260 entered and of the reasons therefor and that
261 within fifteen days after the receipt of a written
262 request the matter will be set down for hearing.

263 If no hearing is requested and none is ordered by
264 the commissioner, the order will remain in effect
265 until it is modified or vacated by the
266 commissioner. If a hearing is requested, the
267 commissioner may modify or vacate the order or
268 extend it until final determination.

269 (c) No stop order may be entered under this
270 section except as provided in subsection (b) of
271 this section without: (1) Appropriate prior notice
272 to the applicant or registrant, the issuer and the
273 person on whose behalf the securities are to be or
274 have been offered; (2) opportunity for hearing;
275 and (3) written findings of fact and conclusions
276 of law.

277 (d) The commissioner may vacate or modify a
278 stop order if he finds that the conditions which
279 prompted its entry have changed or that it is
280 otherwise in the public interest to do so.

281 (e) THE COMMISSIONER MAY DEEM ANY
282 REGISTRATION STATEMENT TO BE ABANDONED IF THE
283 PERSON FILING THE REGISTRATION STATEMENT FAILS TO
284 RESPOND TO ANY REQUEST FOR INFORMATION REQUIRED
285 UNDER THIS CHAPTER, AS AMENDED BY THIS ACT, OR ANY
286 REGULATION OR ORDER UNDER THIS CHAPTER, AS AMENDED
287 BY THIS ACT. THE COMMISSIONER SHALL NOTIFY THE
288 PERSON FILING THE REGISTRATION STATEMENT, THE
289 ISSUER AND THE PERSON ON WHOSE BEHALF THE
290 SECURITIES ARE TO BE OR HAVE BEEN OFFERED, IN
291 WRITING, THAT IF SUCH INFORMATION IS NOT SUBMITTED
292 WITHIN SIXTY DAYS OF SUCH WRITTEN NOTIFICATION,
293 THE REGISTRATION STATEMENT SHALL BE DEEMED
294 ABANDONED. ANY FILING FEE PAID PRIOR TO THE DATE
295 THE REGISTRATION STATEMENT IS DEEMED ABANDONED
296 PURSUANT TO THIS SUBSECTION SHALL NOT BE REFUNDED.
297 ABANDONMENT OF THE REGISTRATION STATEMENT PURSUANT
298 TO THIS SUBSECTION SHALL NOT PRECLUDE THE PERSON
299 FILING THE REGISTRATION STATEMENT FROM SUBMITTING
300 A NEW REGISTRATION STATEMENT UNDER SECTIONS 36b-17
301 OR 36b-18, AS AMENDED. THE HEARING REQUIREMENT IN
302 SUBSECTION (c) OF THIS SECTION SHALL NOT APPLY TO
303 ABANDONMENT PURSUANT TO THIS SUBSECTION.

304 Sec. 5. Subsection (a) of section 36b-21 of
305 the general statutes, as amended by section 11 of
306 public act 97-220, is repealed and the following
307 is substituted in lieu thereof:

308 (a) The following securities are exempted
309 from sections 36b-16, as amended by section 8 of
310 [this act] PUBLIC ACT 97-220, and 36b-22, as

311 amended by section 12 of [this act] PUBLIC ACT
312 97-220: (1) Any security including a revenue
313 obligation issued or guaranteed by the United
314 States, any state, any political subdivision of a
315 state, or any agency or corporate or other
316 instrumentality of one or more of the foregoing;
317 or any certificate of deposit for any of the
318 foregoing; (2) any security issued or guaranteed
319 by Canada, any Canadian province, any political
320 subdivision of any such province, any agency or
321 corporate or other instrumentality of one or more
322 of the foregoing, or any other foreign government
323 with which the United States currently maintains
324 diplomatic relations, if the security is
325 recognized as a valid obligation by the issuer or
326 guarantor; (3) any security issued by and
327 representing an interest in or a debt of, or
328 guaranteed by, any bank organized under the laws
329 of the United States, or any bank, savings
330 institution or trust company organized and
331 supervised under the laws of any state; (4) any
332 security issued by and representing an interest in
333 or a debt of, or guaranteed by, any federal
334 savings and loan association, or any savings and
335 loan or similar association organized under the
336 laws of any state; (5) any security issued by and
337 representing an interest in or a debt of, or
338 guaranteed by, any insurance company organized
339 under the laws of any state and authorized to do
340 business in this state; (6) any security issued or
341 guaranteed by any federal credit union or any
342 credit union, industrial loan association or
343 similar association organized and supervised under
344 the laws of this state; (7) any security issued or
345 guaranteed by any railroad, other common carrier,
346 public utility or holding company which is (A)
347 subject to the jurisdiction of the Interstate
348 Commerce Commission or its successor agency; (B) a
349 registered holding company under the Public
350 Utility Holding Company Act of 1935 or a
351 subsidiary of such a company within the meaning of
352 that act; (C) regulated in respect of its rates
353 and charges by a governmental authority of the
354 United States or any state; or (D) regulated in
355 respect of the issuance or guarantee of the
356 security by a governmental authority of the United
357 States, any state, Canada or any Canadian
358 province; (8) (A) ANY SECURITY APPEARING ON THE

359 LIST OF OVER-THE-COUNTER AND FOREIGN SECURITIES
360 APPROVED FOR MARGIN BY THE BOARD OF GOVERNORS OF
361 THE FEDERAL RESERVE SYSTEM WHICH IS NOT OTHERWISE
362 A COVERED SECURITY, (B) ANY WARRANT OR RIGHT TO
363 PURCHASE OR SUBSCRIBE TO ANY SECURITY DESCRIBED IN
364 SUBPARAGRAPH (A) OF THIS SUBDIVISION, AND (C) any
365 warrant or right to purchase or subscribe to any
366 security listed or approved for listing upon
367 notice of issuance on [(A)] (i) the New York Stock
368 Exchange, the American Stock Exchange, the Chicago
369 Board Options Exchange and such other securities
370 exchanges as may be designated by the commissioner
371 from time to time, [(B)] (ii) the list of
372 over-the-counter securities approved for margin by
373 the Board of Governors of the Federal Reserve
374 System WHERE SUCH SECURITY IS A COVERED SECURITY,
375 or [(C)] (iii) the national market system of the
376 National Association of Securities Dealers
377 Automated Quotation System established pursuant to
378 the Securities Exchange Act of 1934; (9) any
379 security issued by any person organized and
380 operated not for private profit but exclusively
381 for religious, educational, benevolent,
382 charitable, fraternal, social, athletic or
383 reformatory purposes, or as a Chamber of Commerce
384 or trade or professional association; (10) any
385 commercial paper which arises out of a current
386 transaction or the proceeds of which have been or
387 are to be used for current transactions, and which
388 evidences an obligation to pay cash within nine
389 months of the date of issuance, exclusive of days
390 of grace, or any renewal of such paper which is
391 likewise limited, or any guarantee of such paper
392 or of any such renewal; (11) any security issued
393 in connection with an employees' stock purchase,
394 stock option, savings, pension, profit-sharing or
395 similar benefit plan; (12) any security issued by
396 any cooperative apartment corporation incorporated
397 under the laws of this state, located in and
398 operating wholly within the borders of this state,
399 in conjunction with the execution of proprietary
400 leases; (13) any security issued by any person,
401 organized and located in this state and operating
402 exclusively for the purpose of promoting the
403 industrial or commercial development of this
404 state, or such development of any political
405 subdivision thereof or such development of any
406 regional planning area within this state, if such

407 persons are approved by the Commissioner of
408 Economic and Community Development and such
409 approval has been certified, in writing, by said
410 Commissioner of Economic and Community Development
411 to the commissioner; such approval and
412 certification shall be conclusive as to the nature
413 and purpose of such person; (14) any security
414 issued by the Connecticut Development Credit
415 Corporation; (15) any security issued by any
416 nonstock corporation, which is incorporated under
417 the laws of this state as a cooperative marketing
418 corporation and has its principal place of
419 business in this state, and which is a farmers'
420 cooperative organization as defined in Section 521
421 of the Internal Revenue Code of 1986, or any
422 subsequent corresponding internal revenue code of
423 the United States, as from time to time amended,
424 if such corporation has been certified in writing
425 by the Connecticut Department of Agriculture to
426 the commissioner to be a bona fide cooperative
427 marketing corporation; such certification shall be
428 conclusive as to the nature and purpose of such
429 corporation; (16) any security issued by all
430 cooperative associations organized or existing
431 under chapter 595; (17) any security issued by any
432 person organized, located and operating within or
433 from the borders of this state, when selling or
434 offering for sale an interest in real estate
435 limited partnerships or real estate syndications
436 exclusively, if such person has obtained a permit
437 from the Real Estate Commission; (18) any security
438 which, prior to or within sixty days after October
439 1, 1977, has been sold or disposed of by the
440 issuer or bona fide offered to the public, but
441 this exemption shall not apply to any new offer of
442 any such security by an issuer or underwriter
443 subsequent to such sixty days; (19) any interest
444 or participation in any common trust fund or
445 similar fund established and maintained by a bank,
446 or by one or more banks under common control as
447 otherwise authorized by general statute,
448 exclusively for the collective investment and
449 reinvestment of assets contributed thereto by such
450 bank in its fiduciary capacity; (20) any security
451 issued by a worker cooperative corporation formed
452 under the provisions of sections 33-418f to
453 33-418o, inclusive; (21) any other security that
454 the commissioner may exempt, conditionally or

455 unconditionally, on a finding that registration is
456 not necessary or appropriate in the public
457 interest or for the protection of investors.

458 Sec. 6. Subsection (b) of section 36b-21 of
459 the general statutes, as amended by section 11 of
460 public act 97-220, is repealed and the following
461 is substituted in lieu thereof:

462 (b) The following transactions are exempted
463 from sections 36b-16, as amended by section 8 of
464 [this act] PUBLIC ACT 97-220, and 36b-22, as
465 amended by section 12 of [this act] PUBLIC ACT
466 97-220: (1) Any isolated nonissuer transaction,
467 whether effected through a broker-dealer or not;
468 (2) any nonissuer [distribution of an outstanding
469 security if (A) a recognized securities manual
470 contains the names of the issuer's officers and
471 directors, a balance sheet of the issuer as of a
472 date within eighteen months, and a profit and loss
473 statement for either the fiscal year preceding
474 that date or the most recent year of operations]
475 TRANSACTION BY A REGISTERED AGENT OF A REGISTERED
476 BROKER-DEALER IN A SECURITY OF A CLASS THAT HAS
477 BEEN OUTSTANDING IN THE HANDS OF THE PUBLIC FOR AT
478 LEAST NINETY DAYS PROVIDED, AT THE TIME OF THE
479 TRANSACTION: (A) THE SECURITY IS SOLD AT A PRICE
480 REASONABLY RELATED TO THE CURRENT MARKET PRICE OF
481 THE SECURITY; (B) THE SECURITY DOES NOT CONSTITUTE
482 THE WHOLE OR PART OF AN UNSOLD ALLOTMENT TO, OR A
483 SUBSCRIPTION OR PARTICIPATION BY, THE
484 BROKER-DEALER AS AN UNDERWRITER OF THE SECURITY;
485 (C) A RECOGNIZED SECURITIES MANUAL CONTAINS A
486 DESCRIPTION OF THE BUSINESS AND OPERATIONS OF THE
487 ISSUER; THE NAMES OF THE ISSUER'S OFFICERS AND
488 DIRECTORS; AN AUDITED BALANCE SHEET OF THE ISSUER
489 AS OF A DATE WITHIN EIGHTEEN MONTHS, OR IN THE
490 CASE OF A REORGANIZATION OR MERGER WHERE THE
491 PARTIES TO THE REORGANIZATION OR MERGER HAD SUCH
492 AUDITED BALANCE SHEET, A PRO FORMA BALANCE SHEET;
493 AND AN AUDITED INCOME STATEMENT FOR EACH OF THE
494 ISSUER'S PRECEDING TWO FISCAL YEARS, OR FOR THE
495 PERIOD OF EXISTENCE OF THE ISSUER, IF IN EXISTENCE
496 FOR LESS THAN TWO YEARS, OR IN THE CASE OF A
497 REORGANIZATION OR MERGER WHERE THE PARTIES TO THE
498 REORGANIZATION OR MERGER HAD SUCH AUDITED INCOME
499 STATEMENT, A PRO FORMA INCOME STATEMENT; AND (D)
500 THE ISSUER OF THE SECURITY HAS A CLASS OF EQUITY
501 SECURITIES LISTED ON A NATIONAL SECURITIES
502 EXCHANGE REGISTERED UNDER THE SECURITIES EXCHANGE

503 ACT OF 1934, OR DESIGNATED FOR TRADING ON THE
504 NATIONAL ASSOCIATION OF SECURITIES DEALERS
505 AUTOMATED QUOTATION SYSTEM, except that the
506 exemption shall not be available for any
507 distribution of securities issued by a blank check
508 company, shell company, dormant company or any
509 issuer that has been merged or consolidated with
510 or has bought out a blank check company, shell
511 company or dormant company unless the issuer or
512 any predecessor has continuously operated its
513 business for at least the preceding five years and
514 has had gross operating revenue in each of the
515 preceding five years, including gross operating
516 revenue of at least five hundred thousand dollars
517 per year in three of the preceding five years; [or
518 (B)] (3) ANY NONISSUER DISTRIBUTION OF AN
519 OUTSTANDING SECURITY IF the security has a fixed
520 maturity or a fixed interest or dividend provision
521 and there has been no default during the current
522 fiscal year or within the three preceding fiscal
523 years, or during the existence of the issuer and
524 any predecessors if less than three years, in the
525 payment of principal, interest or dividends on the
526 security; [(3)] (4) any nonissuer transaction
527 effected by or through a registered broker-dealer
528 pursuant to an unsolicited order or offer to buy;
529 but the commissioner may by regulation require
530 that the customer acknowledge upon a specified
531 form that the sale was unsolicited, and that a
532 signed copy of each such form be preserved by the
533 broker-dealer for a specified period or that the
534 confirmation delivered to the purchaser or a
535 memorandum delivered in connection therewith shall
536 confirm that such purchase was unsolicited by the
537 broker-dealer or any agent of the broker-dealer;
538 [(4)] (5) any transaction between the issuer or
539 other person on whose behalf the offering is made
540 and an underwriter, or among underwriters; [(5)]
541 (6) any transaction in a bond or other evidence of
542 indebtedness secured by a real or chattel mortgage
543 or deed of trust or by an agreement for the sale
544 of real estate or chattels, if the entire
545 mortgage, deed of trust or agreement, together
546 with all the bonds or other evidences of
547 indebtedness secured thereby, is offered and sold
548 as a unit; [(6)] (7) any transaction by an
549 executor, administrator, sheriff, marshal,
550 receiver, trustee in bankruptcy, creditors'

551 committee in a proceeding under the Bankruptcy
552 Act, guardian or conservator; [(7)] (8) any
553 transaction executed by a bona fide pledgee
554 without any purpose of evading sections 36b-2 to
555 36b-33, inclusive, as amended by this act AND
556 PUBLIC ACT 97-220; [(8)] (9) any offer or sale to
557 a bank and trust company, a national banking
558 association, a savings bank, a savings and loan
559 association, a federal savings and loan
560 association, a credit union, a federal credit
561 union, trust company, insurance company,
562 investment company as defined in the Investment
563 Company Act of 1940, pension or profit-sharing
564 trust, or other financial institution or
565 institutional buyer, or to a broker-dealer,
566 whether the purchaser is acting for itself or in
567 some fiduciary capacity; [(9)] (10) (A) subject to
568 the provisions of this subdivision, any
569 transaction not involving a public offering within
570 the meaning of Section 4(2) of the Securities Act
571 of 1933, but not including any transaction
572 specified in the rules and regulations thereunder;
573 (B) subject to the provisions of this subdivision,
574 any transaction made in accordance with the
575 uniform exemption from registration for small
576 issuers authorized in Section 19(c)(3)(C) of the
577 Securities Act of 1933. (C) The exemptions set
578 forth in subdivisions [(9)] (10) (A) and [(9)]
579 (10) (B) of this subsection shall not be available
580 for transactions in securities issued by any blank
581 check company, shell company or dormant company.
582 (D) The exemptions set forth in subdivisions [(9)]
583 (10) (A) and [(9)] (10) (B) of this subsection
584 may, with respect to any security or transaction
585 or any type of security or transaction, be
586 modified, withdrawn, further conditioned or waived
587 as to conditions, in whole or in part,
588 conditionally or unconditionally, by the
589 commissioner, acting by regulation, rule or order,
590 on a finding that such regulation, rule or order
591 is necessary or appropriate in the public interest
592 or for the protection of investors. (E) A fee of
593 one hundred fifty dollars shall accompany any
594 filing made with the commissioner pursuant to this
595 subdivision; [(10)] (11) any offer or sale of a
596 preorganization certificate or subscription if (A)
597 no commission or other remuneration is paid or
598 given directly or indirectly for soliciting any

599 prospective subscriber, (B) the number of
600 subscribers does not exceed ten, and (C) no
601 payment is made by any subscriber; [(11)] (12) any
602 transaction pursuant to an offer to existing
603 security holders of the issuer, including persons
604 who at the time of the transaction are holders of
605 convertible securities, nontransferable warrants
606 or transferable warrants exercisable within not
607 more than ninety days of their issuance, if (A) no
608 commission or other remuneration other than a
609 standby commission is paid or given directly or
610 indirectly for soliciting any security holder in
611 this state, or (B) the issuer first files a
612 notice, in such form and containing such
613 information as the commissioner may by regulation
614 prescribe, specifying the terms of the offer and
615 the commissioner does not by order disallow the
616 exemption within the next ten full business days;
617 [(12)] (13) any offer, but not a sale, of a
618 security for which registration statements have
619 been filed under both sections 36b-2 to 36b-33,
620 inclusive, as amended by this act AND PUBLIC ACT
621 97-220, and the Securities Act of 1933, if no stop
622 order or refusal order is in effect and no public
623 proceeding or examination looking toward such an
624 order is pending under either said sections or the
625 Securities Act of 1933; [(13)] (14) any
626 transaction exempt under Section 4(6) of the
627 Securities Act of 1933, and the rules and
628 regulations thereunder. The issuer shall, prior to
629 the first sale, file with the commissioner a
630 notice, in such form and containing such
631 information as the commissioner may by regulation,
632 rule or order prescribe. A fee of one hundred
633 fifty dollars shall accompany any such filing made
634 pursuant to this subdivision; [(14)] (15) any
635 transaction if all the following conditions are
636 satisfied: (A) The offer and sale is effectuated
637 by the issuer of the security; (B) the total
638 number of purchasers of all securities of the
639 issuer does not exceed ten. A subsequent sale of
640 securities that (i) is registered under sections
641 36b-2 to 36b-33, inclusive, as amended by this act
642 AND PUBLIC ACT 97-220, (ii) is sold pursuant to an
643 exemption under said sections other than this
644 subdivision, or (iii) involves covered securities,
645 shall not be integrated with a sale pursuant to
646 this exemption in computing the number of

647 purchasers hereunder. For the purpose of this
648 subdivision, each of the following is deemed to be
649 a single purchaser of a security: A husband and
650 wife, a child and his parent or guardian when the
651 parent or guardian holds the security for the
652 benefit of the child, a corporation, a
653 partnership, an association or other
654 unincorporated entity, a joint stock company or a
655 trust, but only if the corporation, partnership,
656 association, unincorporated entity, joint stock
657 company or trust was not formed for the purpose of
658 purchasing the security; (C) no advertisement,
659 article, notice or other communication published
660 in any newspaper, magazine or similar medium, or
661 broadcast over television or radio, or any other
662 general solicitation is used in connection with
663 the sale; and (D) no commission, discount or other
664 remuneration is paid or given directly or
665 indirectly in connection with the offer and sale,
666 and the total expenses, excluding legal and
667 accounting fees, in connection with the offer and
668 sale do not exceed one per cent of the total sales
669 price of the securities. For purposes of this
670 subdivision, a difference in the purchase price
671 among the purchasers shall not, in and of itself,
672 be deemed to constitute indirect remuneration;
673 (16) ANY TRANSACTION EXEMPT UNDER RULE 701, 17 CFR
674 SECTION 230.701 PROMULGATED UNDER SECTION 3(b) OF
675 THE SECURITIES ACT OF 1933; [(15)] (17) any other
676 transaction that the commissioner may exempt,
677 conditionally or unconditionally, on a finding
678 that registration is not necessary or appropriate
679 in the public interest or for the protection of
680 investors.

681 Sec. 7. Section 36b-26, as amended by section
682 36 of public act 97-47, is amended by adding
683 subsection (e) as follows:

684 (NEW) (e) (1) Any person subject to the
685 jurisdiction of the commissioner under this
686 chapter, as amended by this act, shall (A)
687 promptly make available to the commissioner such
688 authentic, accurate, legible, complete,
689 systematically organized and current copies of
690 such records as the commissioner may require in
691 connection with any investigation, examination or
692 proceeding under this chapter, as amended by this
693 act; (B) provide such personnel and equipment as
694 the commissioner deems necessary to the conduct of

695 any such investigation, examination or proceeding,
696 including, but not limited to, assistance in the
697 analysis of computer generated records; (C)
698 provide copies of computer printouts of records
699 when so requested by the commissioner; (D) furnish
700 unrestricted access to all areas of its business
701 operations or wherever records may be located,
702 including access to electronically stored records;
703 and (E) otherwise cooperate with the commissioner.

704 (2) Upon the request of the commissioner, a
705 registered broker-dealer or investment adviser
706 shall produce and furnish to the commissioner a
707 listing of all records relating to the business
708 conducted from one or more locations.

709 (3) Nothing in this subsection shall be
710 construed to create or derogate from any privilege
711 which exists at common law or otherwise with
712 respect to records sought by the commissioner
713 pursuant to this subsection.

714 (4) For purposes of this subsection,
715 "records" includes, but is not limited to, books,
716 papers, correspondence, memoranda, agreements,
717 diaries, logs, notes, reports, advisories,
718 updates, ledgers, journals, visual, audio,
719 magnetic or electronic records, manual and
720 computer records, printouts and software, any
721 summary outline and index thereof and any other
722 document, whether retained electronically or in
723 paper format.

724 Sec. 8. Subsection (d) of section 36b-27 of
725 the general statutes, as amended by section 13 of
726 public act 97-220, is repealed and the following
727 is substituted in lieu thereof:

728 (d) (1) Whenever the commissioner finds as
729 the result of an investigation that any person or
730 persons have violated any of the provisions of
731 sections 36b-2 to 36b-33, inclusive, as amended by
732 this act AND PUBLIC ACT 97-220, or any regulation,
733 rule or order adopted or issued under said
734 sections, the commissioner may send a notice to
735 such person or persons by registered mail, return
736 receipt requested. Any such notice shall include:
737 (A) A reference to the title, chapter, regulation,
738 rule or order alleged to have been violated; (B) a
739 short and plain statement of the matter asserted
740 or charged; (C) the maximum fine that may be
741 imposed for such violation; and (D) the time and
742 place for the hearing. Such hearing shall be fixed

743 for a date not earlier than fourteen days after
744 the notice is mailed.

745 (2) The commissioner shall hold a hearing
746 upon the charges made unless such person or
747 persons fail to appear at the hearing. Said
748 hearing shall be held in accordance with the
749 provisions of chapter 54. After the hearing if the
750 commissioner finds that the person or persons have
751 violated any of the provisions of sections 36b-2
752 to 36b-33, inclusive, as amended by this act AND
753 PUBLIC ACT 97-220, or any regulation, rule or
754 order adopted or issued under said sections, the
755 commissioner may, in his discretion and in
756 addition to any other remedy authorized by said
757 sections, order that a [civil penalty] FINE not
758 exceeding ten thousand dollars per violation be
759 imposed upon such person or persons. If such
760 person or persons fail to appear at the hearing,
761 the commissioner may, as the facts require, order
762 that a [civil penalty] FINE not exceeding ten
763 thousand dollars per violation be imposed upon
764 such person or persons. The commissioner shall
765 send a copy of any order issued pursuant to this
766 subsection by registered mail, return receipt
767 requested, to any person or persons named in such
768 order.

769 Sec. 9. (NEW) (a) Section 6 of The
770 Philanthropy Protection Act of 1995 shall not
771 preempt the laws of this state that require
772 registration or qualification of securities or
773 require any person to register as or be subject to
774 registration as a broker-dealer, agent, investment
775 adviser or investment adviser agent.

776 (b) The Philanthropy Protection Act of 1995
777 shall not apply in any administrative or judicial
778 action as a defense to any claim that any person,
779 security, interest, or participation of the type
780 described in The Philanthropy Protection Act of
781 1995 and the amendments made by such act is
782 subject to the provisions of sections 36b-2 to
783 36b-33, inclusive, of the general statutes, as
784 amended by this act.

785 BA COMMITTEE VOTE: YEA 17 NAY 1 JF C/R FIN
786 FIN COMMITTEE VOTE: YEA 42 NAY 0 JF

* * * * *

"THE FOLLOWING FISCAL IMPACT STATEMENT AND BILL ANALYSIS ARE PREPARED FOR THE BENEFIT OF MEMBERS OF THE GENERAL ASSEMBLY, SOLELY FOR PURPOSES OF INFORMATION, SUMMARIZATION AND EXPLANATION AND DO NOT REPRESENT THE INTENT OF THE GENERAL ASSEMBLY OR EITHER HOUSE THEREOF FOR ANY PURPOSE."

* * * * *

FISCAL IMPACT STATEMENT - BILL NUMBER HB 5281

STATE IMPACT Minimal Workload Decrease (Banking Fund), see explanation below

MUNICIPAL IMPACT None

STATE AGENCY(S) Department of Banking

EXPLANATION OF ESTIMATES:

The bill makes a number of changes to bring the state securities law into conformity with the federal national Securities Markets Improvement Act of 1996 (NSMIA). It specifies that federally registered investment advisers file notice with the commissioner of the Department of Banking for each branch office. It establishes a \$100 non-refundable notice fee for federally registered investment advisers in lieu of a registration fee. The registration fee was also \$100 for these individuals.

The commissioner is allowed to consider a registration statement as abandoned if the applicant fails to supply required information.

There is a minimal workload decrease for the Department of Banking associated with considering any registration statement abandoned.

* * * * *

OLR BILL ANALYSIS

HB 5281

AN ACT CONCERNING THE CONNECTICUT UNIFORM SECURITIES ACT

SUMMARY: This bill makes a number of changes to bring the state securities law into closer conformity with the federal National Securities Markets Improvement Act of 1996 (NSMIA) to supplement the major changes made by PA 97-220 last year. (PA 97-220 had already made major conforming changes.) The bill:

1. requires registration of certain investment adviser agents associated with exempt investment advisers,
2. lets federally registered investment advisers file notice with the banking commissioner for each branch office instead of having to register it,
3. simplifies procedures for considering an application abandoned,
4. exempts from registration those securities that are federally approved for margin,
5. clarifies several other exemptions, and
6. requires anyone subject to the banking commissioner's jurisdiction under the securities act to make their paper and computer records available to him.

The bill also exercises the state's option under a federal law to override a federal preemption of state securities registration for charitable organizations and their securities and similar investments in pooled income funds and makes other minor and technical changes.

EFFECTIVE DATE: October 1, 1998

FURTHER EXPLANATION**Investment Adviser and Agent Registration**

The bill clarifies the definition of investment adviser to exclude an "investment adviser agent." It also modifies the definition of "investment adviser agent" to make it consistent with a similar federal definition. Specifically, it adds to the definition any investment adviser's partner, officer, or director or someone occupying a similar status or performing similar functions, or other individual employed, appointed, or authorized by or associated with an investment adviser, who, for compensation, (1) is employed to solicit business or (2) makes any recommendation or otherwise renders advice regarding securities to clients. Current law only includes these people if they otherwise come within the definition.

The bill specifically exempts from the definition of investment adviser agent (and consequently from state registration) any individual (1) who is not within the intent of the definition as the commissioner designates by regulation or order and (2) who is a "supervised person" employed, appointed, or authorized by; associated with; or acting on behalf of an investment adviser who is exempt from state registration because he is federally registered or federally exempt from registration.

But the bill considers a supervised person to be an investment adviser agent and requires him to register with the state if he:

1. has a place of business in this state and more than 10% of the advisory clients are individuals whose contract calls for the exempt investment adviser to manage less than \$500,000, or whose net worth, including spousal assets, is under \$1 million;
2. regularly solicits, meets with, or otherwise communicates with the exempt investment adviser's clients in this state; and
3. does not exclusively render impersonal investment advice, by means of written material or oral statements that do not purport to meet the objectives or needs of specific individuals or accounts.

A "supervised person" is an investment adviser's

partner, officer, director, or other person occupying a similar status or performing similar functions, employee, or other person who provides investment advice on the adviser's behalf and is supervised and controlled by the adviser.

Branch Offices

Current law requires all investment advisers' Connecticut branch offices to be registered with the Banking Department. The bill makes the following changes for federally registered investment advisers.

1. It allows them, instead of registering each Connecticut branch office, to file a notice with the commissioner for each office, along with a \$100 nonrefundable notice fee (the same as the current registration fee).
2. It deletes the requirement that such advisers notify the commissioner when they engage a new manager.
3. It makes the state notification requirement for branch office acquisitions and relocations the same as under federal law, allows state notice to be concurrent with federal notice, and maintains the current \$100 nonrefundable state fee.

Abandoned Registrations

The bill allows the commissioner, without a hearing, to deem any registration statement abandoned if the applicant fails to respond to a request for required information. It requires the commissioner to notify the applicant, the issuer, and the person on whose behalf the securities are being offered, in writing, that they have 60 days after the notice to submit the information, or the registration will be deemed abandoned. Under the bill, any paid filing fee is also deemed abandoned and cannot be refunded. But the bill specifies that abandonment of the registration does not preclude anyone from later submitting a new registration statement.

Currently, in order to dispose of a registration statement that has been abandoned, the commissioner

must issue a stop order denying effectiveness, provide an opportunity for a hearing, and issue written findings of fact and conclusions of law.

Securities Registration Exemptions

The bill adds a specific exemption from registration for (1) any security on the list of over-the-counter and foreign securities approved for margin by the Federal Reserve Board that is not otherwise covered under federal law and (2) any warrant or right to purchase or subscribe to such a security.

Current law exempts from registration nonissuer distributions of outstanding securities if a recognized securities manual contains the names of the issuer's officers and directors, the issuer's balance sheet dated within 18 months of the exemption, and a profit and loss statement for either the preceding fiscal year or the most recent year of operation. The bill expands the information that must be in the manual for the exemption to apply to include:

1. a description of the issuer's business and operations, instead of just the names of its officers and directors;
2. an audited balance sheet or a pro forma balance sheet in the case of a reorganization or merger where the parties had such an audited balance sheet; and
3. an audited income statement for the two preceding fiscal years, or for the issuer's period of existence, if this is less than two years, or a pro forma income statement for a reorganization or merger where the parties had such an audited income statement.

The bill creates additional conditions for this exemption, including that the:

1. transaction be made by a registered agent of a registered broker-dealer;
2. security be of a class that has been outstanding in the public's hands for at least 90 days;

3. security be sold at a price reasonably related to its current market price;
4. security not constitute the whole or part of an unsold allotment to, or a subscription or participation by, the broker-dealer as the security's underwriter; and
5. issuer have a class of equity securities listed on a federally registered national securities exchange or designated for trading on the National Association of Securities Dealers Automated Quotation system.

The bill exempts from state registration securities that are exempt under federal Rule 701 (those issued under a compensatory benefits plan).

Requirement to Make Records Available

The bill requires anyone subject to the commissioner's jurisdiction under the state's Uniform Securities Act to make their records available to him upon request. Specifically, the bill requires them to:

1. promptly make available authentic, accurate, legible, complete, systematically organized, and current copies of whatever records the commissioner requires in connection with an investigation, examination, or proceeding;
2. provide him with personnel and equipment necessary to conduct such an investigation, examination, or proceeding, including assistance in analyzing computer generated records;
3. provide copies of computer printouts of records when the commissioner requests it;
4. furnish unrestricted access to all business areas or wherever records are located, including access to electronically stored records; and
5. otherwise cooperate with the commissioner.

If the commissioner requests it, under the bill, a

registered broker-dealer or investment adviser must furnish a listing of all records related to the business conducted from one or more locations. The bill does not create or take away from any privilege that exists at common law or otherwise with respect to records the commissioner seeks under these provisions.

For purposes of these provisions, the bill defines "records" as including books, papers, correspondence, memoranda, agreements, diaries logs, notes, reports, advisories, updates, ledgers, journals, visual, audio, magnetic or electronic records, manual and computer records, printouts and software, any summary outline and index of these items, and any other document, whether kept electronically or on paper.

Override of Federal Preemption

The bill specifies that the federal Philanthropy Protection Act of 1995 does not preempt Connecticut laws that require registration or qualification of securities or require anyone to register as a broker-dealer, agent, investment adviser, or investment adviser agent. It also specifies that the federal act does not apply as a defense to any claim that a person, security, interest, or participation is subject to the requirements of the state securities law. (The federal law exempts from state registration securities, interests, or participations in any pooled income fund, collective trust fund, collective investment fund, or similar fund maintained by a charitable organization for certain purposes. It also exempts from state registration as a broker-dealer, investment adviser, or their agent any charitable organization or its trustee, director, officer, employee, or volunteer acting within the scope of his employment or duties. The act gives states three years from December 8, 1995 to enact a law specifying that these federal provisions do not preempt state law, which this bill does).

BACKGROUND

NSMIA and PA 97-220

Consistent with the federal NSMIA preemptions, PA 97-220 eliminated state registration and regulation for (1) securities covered by federal law; (2) securities issued by federally registered investment companies,

such as various types of mutual funds; and (3) investment advisers with \$25 million or more in assets under management and those exempted from the scope of the federal law. The state still regulates investment advisers under the \$25 million federal threshold. Broker-dealers, agents of both broker-dealers and investment advisers, and securities issues that are not covered by federal law. It also continues to enforce the securities antifraud laws.

COMMITTEE ACTION

Banks Committee

Joint Favorable Change of Reference
Yea 17 Nay 1

Finance, Revenue, and Bonding

Joint Favorable Report
Yea 42 Nay 0